IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.749 of 2008
SHIV SHAMBHU PRASAD & ORS
Versus
THE STATE OF BIHAR
---

4. 11.9.2008. This criminal revision has been preferred against the judgment dated 26 th February, 2007 passed by Fast Track Court No.III, Patna in Cr. Appeal No.124 of 1996/68 of 2006 thereby the judgment and order of conviction and sentenced passed by Shri R.K. Singh, Judicial Magistrate, Danapur in G.R. No.207 of 1988, Trial No.583 of 1996 has been confirmed with modification in sentence.

The learned Magistrate convicted all the three petitioners under sections 25, 26/35 of the Arms Act and sentenced them to undergo R.I. for three years under sections 25/35 of the Arms Act and R.I. for six months under sections 26/35 of the Arms Act. However, in appeal, the learned Fast Track Court while confirming the conviction of the petitioners modified the sentences awarded to the petitioners to the extent of one year under section 25A of the Arms Act and six months under section 26 of the Arms Act. Both the sentences have been directed to run concurrently.

WEB COPY NOT OFFICIAL

This petition is heard only on the point of sentence.

It is submitted by the learned counsel for the petitioners that this is a case of the year 1988. At the time of the alleged occurrence, petitioner no.1 Shiv Shambhu Prasad was minor. So far petitioner no.2 Ganauri Ram is concerned, nothing was recovered from his possession. Petitioner no.3 Sukh Lal Ram was found in possession of

only one cartridge. It is further submitted that Shiv Shambhu Prasad, petitioner no.1 has already remained in jail custody for four months. Ganauri Ram for two and a half months and Sukh Lal Ram for three months. The other submission is that the learned lower court has not considered the provisions of Probation of Offenders Act and awarded substantive sentences. The lower court ought to have given benefit of provisions of Probation of Offenders Act to the petitioners.

Considered the submission of the learned counsel for the petitioners. Perused the impugned order as well as the L.C.R. This is a case of the year 1988. Petitioners have already been harassed for 20 years. Petitioner no.1 has remained in jail custody for four months. Petitioner no.2 for two and a half months and petitioner no.3 for three months. Petitioner no.2 was not found in possession of any arm and only one cartridge was recovered from possession of petitioner no.3. It appears from the statement recorded under section 313 Cr.P.C. that at the time of alleged occurrence, Shiv Shambhu Prasad was minor. His age at that time was about 14 years.

WEB COPY NOT OFFICIAL

Thus, having regard to the facts and circumstances of the case as well as the nature of the accusation, the sentences awarded to the petitioners are hereby reduced to the period already undergone by them.

Accordingly, this application is allowed with modification in the sentence as said above. Petitioners are directed to be released at once if not wanted in any other case.

Let this order be communicated to the court below through

fax on cost being deposited by the petitioners.

(Ghanshyam Prasad)

N.H./

WEB COPY
NOT OFFICIAL